
SUPPLEMENTAL MATERIAL
MAY 18, 2005
CITY COMMISSION MEETING

SUPPLEMENTAL MATERIAL

C7 - Resolutions

- C7C A Resolution Authorizing The Mayor And City Clerk, To Execute An Amended And Restated Concession Agreement By And Between The City Of Miami Beach And Boucher Brothers Miami Beach, LLC, For The Management And Operation Of Beachfront Concessions On The Beaches Seaward Of Lummus Park, Ocean Terrace And North Shore Open Space Park, Miami Beach, Florida.

(Asset Management)

(Additional Information)

- C7D A Resolution, Authorizing The Administration To Issue Request For Qualifications (RFQ) No. 22-04/05 For Professional Building Inspection And Plans Review Services In Various Disciplines On An "As-Needed Basis" And An "On-Going Basis," For The Building Department, Whenever There Are Vacancies Of Inspector And Plans Review Positions Until Such Time That Vacancies Are Filled With Permanent Staff; Further, Extending The Term Of The Existing Agreement With The Firm, M.T. Causley, Inc. Dated March 1, 2004 Until The New Contracts Are Awarded.

(Building Department)

(Resolution)

- C7J A Resolution Authorizing The Mayor And City Clerk To Execute A Professional Services Agreement With McMahon Associates, Inc., In The Amount Of \$76,015.00, For The Preparation Of Phase I -Conceptual Plan Report For A Sixteenth Street Operational Improvements And Enhancement Project; Utilizing \$75,000 In Funds Appropriated For The Purpose By Resolution No. 2004-25589, Dated June 9, 2004; And Pursuant To Resolution No. 2005-25784, Dated January 27, 2005, Which Authorized Contract Negotiations; And Further Authorizing The Appropriation Of An Additional \$1,015 In Concurrence Mitigation / South Beach Funds To Cover The Negotiated Contract Price.

(Public Works)

(Resolution & Agreement)

- C7K A Resolution Approving Subject To Final Approval Of Same By The Authorized Officials In Miami-Dade County, The Proposed Final Plat Of "Meadowood Gardens," A Replat Of Lots 1 Through 12, Block 1 And Tracts "A-9," "B-9" And "C-9" Of Lindisfarne On Fisher Island Section 9, As Recorded In Plat Book 149, Page 86 Of The Public Records Of Miami-Dade County, Florida, Together With A Portion Of Unsubdivided Section 10, Township 54 South, Range 42 East, City Of Miami Beach, Miami-Dade County Florida.

(Public Works)

(Resolution)

R5 - Ordinances

- R5F An Ordinance Amending Ordinance No. 92-2813, The Defined Contribution Retirement Plan 401(A), By Amending The Provisions Of Section 1, Article 5, Subsection 5.03 To Increase The Maximum Monthly Retirement Disability Benefit To Reflect Annual Cost Of Living Increases; Providing For A Repealer, Severability, Codification, And An Effective Date.
(Human Resources)
(Revised Memorandum & Ordinance)

R7 - Resolutions

- R7B A Resolution In Accordance With The Requirements Of Sections 163.3220 - 163.3243, Florida Statutes, Also Referred To As The "Florida Local Government Development Agreement Act," Approving, On Second Reading, A Development Agreement Between The City Of Miami Beach And AR&J SOBE, LLC (A/K/A Potamkin/Berkowitz) For The Development Of The Project, Presently Referred To As "5th And Alton", Containing Approximately 179,000 Square Feet Of Retail Area; A Supermarket; An Approximately 1081 Space Parking Garage; Park-And-Ride Transit Facility, Including An Intermodal/Transportation Component; And Surrounding Streetscape And Public Infrastructure To Serve The Project, Bounded By Lenox Avenue On The East, Alton Road On The West, 6th Street On The North And 5th Street On The South, In Miami Beach.
(City Manager's Office)
(Additional Information)
- R7N A Resolution Approving And Authorizing The City Manager To Issue Two (2) Certifications Of Consistency With The City's Consolidated Plan To Carrfour Supportive Housing, To Renew The Awarded Funds Provided Directly By The U.S. Department Of Housing And Urban Development, To Provide Supportive Housing In The Form Of Twenty-Four (24) Units Of Transitional And Forty-Eight (48) Units Of Permanent Housing For Formerly Homeless Individuals At 8540 Harding Avenue, Miami Beach, Florida.
(Neighborhood Services)
(Resolution)

R9 - New Business and Commission Requests

- R9F Discussion Regarding The Rules And Regulations Governing Dogs, Bicycles, And Skateboards At The New Beach Walk.
(Requested by Commissioner Jose Smith)
(Additional Information)
- R9H Discussion Regarding A Resolution Urging Florida Governor Jeb Bush To Support The Full Funding Recommendation Of The Florida Legislature Related To The Cultural Facilities Program Which Includes The City Of Miami Beach's Application For The Byron Carlyle Theater During His Review And Approval Of The 2006 Budget.
(Requested by Commissioner Jose Smith)
(Resolution)

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

Subject: **Responses to Resident Concerns Related to the Amendment to Beach Concession Agreement by and between the City and Boucher Brothers Miami Beach, LLC**

As a point of general information, the purpose of the concession arrangement is to provide a uniform structure by which services and amenities that are requested and heavily utilized by visitors to the City's beaches, both residents and tourists, alike, can be provided and regulated. These amenities (beverages, food, lounge chairs, and beach umbrellas) would not otherwise be readily available to the City's tourists and residents without the concession agreements. There is a market demand for these items and the concession arrangement is one model by which to provide these services.

With regard to the specific issues raised, below please find the Administration's responses:

- 1) **Does this draft Agreement fully protect the City's financial interest? Not really. Many real impacts on the public beach (long term storage, vehicles, refueling, private tours in vehicles, major jet-ski staging on Monument Island) are not even ON the accounting and evaluation radar.**

The Administration deems that the City's financial interests are well protected. The Agreement, as amended, provides for the City's share of a percentage of gross receipts, (including a minimum guaranteed amount), penalties for late payments, and the financial controls (including agreed upon accounting procedures, inspection of records and auditing requirements) commensurate with a concession operation that handles cash transactions. Any issues related to storage, vehicle usage, and fueling have been addressed in the amended Agreement to the Administration's satisfaction. As to Monument Island; it is not within the scope of the Concession Agreement. Staff will follow-up directly with the resident to determine if there is an on-going issue at Monument Island that requires some type of enforcement action.

- 2) **Does the Agreement uphold City policy to guarantee open space on this famous public resource? Sadly, it rewards a company that has sought to evade this policy.**

Yes, the Agreement does provide for open space and we have not found any evidence of non-compliance with this provision. The Agreement requires that Concessionaire's use of the beach not exceed approximately fifty percent (50%) of the beach frontage. However, we must keep in mind that the Concessionaire has a contractual obligation to provide concession services to the public (tourists and residents alike), based on demand. As such, the Agreement, as originally approved

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by the Mayor and City Commission, does provide that Concessionaire may, on a limited basis, expand its operations if public demand would require same.

- 3) **If as certain sections suggest, beach erosion reduces usable areas of the beach, or life guard stands are added, should the concessionaire be entitled to a privileged proportion of the remaining beach? Wasn't the hard fought 50-50 rule meant to guarantee EQUAL footing, EQUALLY proportionate footprints, to the public? Even if beach surface is reduced by erosion or special events?**

Neither beach erosion nor special events impact the "50-50 rule". All provisions that address placement of equipment and the respective distance requirements (buffer zones) from lifeguard stands must be complied with at all times. Moreover, the Agreement contemplates that additional lifeguard stands may be located, if deemed necessary by the City, and provides for appropriate buffer zones in such events.

- 4) **Aren't there terms in the Agreement where the City gets short-changed? Such as Section 4 (page 24) 4.32.1, pertaining to concessionaire compensation for loss of revenue due to beach erosion.**

Section 4 does not address compensation resulting from beach erosion. However, it does recognize the correlation between the City's excavation/ beach renourishment project and its impact on Concessionaire's operation as it relates to business disruption and reduction of usable beach width/depth for extended periods of time. The Agreement Amendment, as proposed, does provide for certain mutually agreed upon credits that have been deemed to be appropriate under the aforementioned circumstances.

Instead, the City should be paid rent by the concessionaire for LONG TERM STORAGE over many blocks on PUBLIC LAND, of hundreds of cubic feet of unused inventory. The City does not earn a dime from many hundreds of stacked chairs. Why are they taking up public space, year in, year out? Would any one be foolish enough to show this clutter in an advertisement?

The Agreement Amendment, as proposed, provides for the creation of a fenced storage area adjacent to an existing fenced dumpster site which will be used for the storage of certain equipment. Additionally certain areas on the beach are permitted to be used for the stacking of chairs that are not readily required to meet anticipated demand. The City has determined that from both an environmental and public safety perspective, the Agreement provides certain flexibility for managing beachfront equipment, which is deemed to be far less of an impact and preferable to the increase in beachfront vehicular traffic that would otherwise result by the continuous transporting of equipment, to and from the beachfront in order to satisfy patron demand. In part, this is expressed in certain clauses in the Agreement that limit to a specific ratio the number of vacant chairs that can be placed on the beach for rental (Section 3.1.5). In short, due to the volume of chairs that are regularly utilized on the beach, and the requirement to balance how many are placed out for use to address aesthetic issues, there should be some flexibility afforded the concessionaire in order to effectively manage its operation. Staff deems the Agreement strikes a fair balance between a number of competing needs in this regard.

- 5) **Isn't it time the City collect revenues commensurate with real impacts, by implementing better auditing of real impacts? For example EUR Durable**

Concession items such as vehicles, stands, and chairs would be clearly numbered, and their uses defined. If the concessionaire continued to give rides and private tours up and down the beach, a number or visible "badge" would identify those using the public beach as a private road.

EUR Hand held computers with print receipts are used in restaurants and car rentals all over the country. Surely the Concessionaire could provide a printed account of numbers of chairs rented per day /per area. Numbers rented would be compared with maxima currently tolerated. Numbers allowed per area would be posted, like Maximum Capacity in elevators or night clubs.

The percentage of revenues paid by the Concessionaire to the City are commensurate with the provisions of the Agreement, as negotiated and originally approved by the Mayor and City Commission, and for the first three contract years, have been reviewed by the City's Chief Financial Officer and audited by the City's Internal Auditor. Due to certain operational issues which were brought forth by Concessionaire regarding the financial non-feasibility of following certain previously existing contractual accounting/auditing requirements, the City and Concessionaire alternatively established mutually acceptable "agreed upon procedures" which have been deemed to provide the City with the same level of comfort with regard to verification of Concessionaire's required payments to the City.

- 6) Doesn't language in Section 2.1.5 (page 10) undermine the letter and the spirit of the 50-50 rule by apparently giving the concessionaire discretion to cluster "his" 50% wherever he chooses? Is it 50-50 if ONE party gets to choose where and how to implement the rule? The intent of the 50-50 rule is to guarantee open space at predictable and visible intervals.**

Knowing that open space exists out of sight somewhere is not good enough. Just as Handicapped Parking spaces are off limit, so a paying customer can comprehend "that is the public beach area, period".

The Agreement gives the beach-going patron the ability to, themselves, relocate his/her chair and/or umbrella to any location on the public beach they choose to, provided it would be otherwise permissible to any other non-concession associated beach-user. The Agreement does provide the Concessionaire the necessary flexibility to meet customer demands, by reallocating certain equipment, from area to area, so long as the overall number of equipment does not exceed the maximum number allowed. Notwithstanding the foregoing, the "50-50 rule" is still in effect and not diminished. The Agreement does not segregate the beach-going public into "paying" and "non-paying" areas or categories.

- 7) And finally, before rewarding such a lucrative monopoly, shouldn't there be some discussion of the concessionaire's past performance and what many of us see as non compliance on City beaches from 15th to 23rd street? Where long city blocks of merged concessions are the rule, against the rule.**

For the purposes of the Proposed Agreement Amendment, it should be clarified that the beaches from 15th Street to 23rd Street, are not part of, nor governed by this Concession Agreement. With regard to the scope that is covered within the Agreement, the Concessionaire's performance has been exemplary during the initial

three and one-half (3 ½) year period and has generated net revenues payable to the City in excess of \$1,100,000 during said period. Moreover, to date, the Office of Asset Management, who oversees this Agreement, reports that complaints associated with Concessionaire's operations have been virtually non-existent.

I hope the responses provided above have addressed the concerns that have been reported. If you have any questions or need additional clarification please do not hesitate to contact me.

JMG: ~~PH~~:JD:rlr

T:\AGENDA\2005\MAY1805\CONSENT\BOUCHER AGREEMENT CONCERNS MEM.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE ADMINISTRATION TO ISSUE REQUEST FOR QUALIFICATIONS (RFQ) NO. 22-04/05 FOR PROFESSIONAL BUILDING INSPECTION AND PLANS REVIEW SERVICES IN VARIOUS DISCIPLINES ON AN "AS-NEEDED BASIS" AND AN "ON-GOING BASIS", FOR THE BUILDING DEPARTMENT, WHENEVER THERE ARE VACANCIES OF INSPECTOR AND PLANS REVIEW POSITIONS UNTIL SUCH TIME THAT THE VACANCIES ARE FILLED WITH PERMANENT STAFF; FURTHER, EXTENDING THE TERM OF THE EXISTING AGREEMENT WITH THE FIRM, M.T. CAUSLEY, INC., DATED MARCH 1, 2004, UNTIL THE NEW CONTRACTS ARE AWARDED.

WHEREAS, it is the intent of the City to utilize the Request for Qualifications (RFQ) process to select several qualified firms that will be utilized by the Building Department to provide building inspection and plans review services on an "as-needed" basis; and

WHEREAS, the existing Professional Services Agreement has expired as of February 28, 2005, and the total amount invoiced to date and pending invoices is close to the existing \$130,000 limitation; and

WHEREAS, the Building Department has current vacancies for inspector positions and is unable to meet the current demand and utilizing Professional Building Inspection Services is needed until such time that the vacancies are filled with permanent staff; and

WHEREAS, the recruitment process is underway for the vacant positions, and some positions like Electrical Inspector, Roofing Inspectors and Structural Plans Examiner are difficult to fill which may require a lengthy recruitment process; and

WHEREAS, so as to not adversely impact the service to the public by any discontinuity of service, professional building inspection and plans review services are required to be utilized on an "as-needed basis"; and

WHEREAS, in order to continue services without interruption to the public, it is necessary to extend the term of the existing Professional Services Agreement with the firm, M.T.. Causley, Inc. until the new contracts are awarded.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the Administration to issue a Request for Qualifications (RFQ) for Professional Building Inspection and Plans Review Services in various disciplines on an "as-needed basis" and an "on-going basis" for the Building

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Department whenever there are vacancies of inspector and plans review positions until such time that vacancies are filled with permanent staff; further, extending the term of the existing agreement with the firm, M.T. Causley, Inc. dated March 1, 2004 until the new contracts are awarded.

PASSED and ADOPTED this 18th day of May, 2005.

MAYOR

ATTEST:

CITY CLERK

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

5/13/05

Date

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH McMAHON ASSOCIATES, INC., IN THE AMOUNT OF \$76,015.00, FOR THE PREPARATION OF PHASE I - CONCEPTUAL PLAN REPORT FOR A SIXTEENTH STREET OPERATIONAL IMPROVEMENTS AND ENHANCEMENT PROJECT; UTILIZING \$75,000 IN FUNDS APPROPRIATED FOR THE PURPOSE BY RESOLUTION NO. 2004-25589, DATED JUNE 9, 2004; AND PURSUANT TO RESOLUTION NO. 2005-25784, DATED JANUARY 27, 2005, WHICH AUTHORIZED CONTRACT NEGOTIATIONS; AND FURTHER AUTHORIZING THE APPROPRIATION OF AN ADDITIONAL \$1,015 IN CONCURRENCY MITIGATION / SOUTH BEACH FUNDS TO COVER THE NEGOTIATED CONTRACT PRICE.

WHEREAS, the Project Bank of the Miami Beach Municipal Mobility Plan (MMP) includes a 16th Street Operational Improvements/Enhancements as MMP Project #33 (the Project); and

WHEREAS, Resolution No. 2004-25589, dated June 9, 2004, authorized the execution of an Interlocal Agreement with the Metropolitan Planning Organization (MPO), in the amount of \$75,000; and appropriated \$45,000 in MPO grant funds and \$30,000 in Concurrency Mitigation/South Beach funds for the Project's Phase I – Planning Services; and

WHEREAS, Resolution No. 2004-25590, dated June 9, 2004, authorized the execution of a Joint Participation Agreement (JPA) with the Florida Department of Transportation (FDOT) in the amount of \$190,000, and appropriated \$100,000 in FDOT grant funds and \$90,000 in Concurrency Mitigation/South Beach funds for the project's Phase II – Design Services; and

WHEREAS, Resolution No. 2004-25591, dated June 9, 2004, authorized the issuance of Request for Qualifications (RFQ) for the Project's Phases I and II, above described; and

WHEREAS, RFQ No. 37-03/04 was issued on August 18, 2004, and eight (8) proposals were received on October 8, 2004; and

WHEREAS, the City-appointed Evaluation Committee met twice and recommended to the City Manager the three top-ranked firms, in the following order: McMahon Associates, Consul Tech Transportation, and Chen & Associates; and

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WHEREAS, Resolution No. 2005-25784, dated January 12, 2005, accepted the ranking of qualifications received and authorized negotiations with the top-ranked firm of McMahon Associates; and

WHEREAS, after three (3) negotiation sessions, the Administration was able to reach an agreement with McMahon Associates, who proposes to prepare the required Phase I-Master Plan for the project at a cost not to exceed \$76,015; and

WHEREAS, this exceeds the initial \$75,000 budget by \$1,015, which funds can be provided by the Concurrency Mitigation/South Beach Program.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby authorize the Mayor and City Clerk to execute a Professional Services Agreement with McMahon Associates, Inc, in the amount of \$76,015, for the preparation of Phase I – Conceptual Plan Report for a Sixteenth Street Operational Improvements and Enhancement Project; utilizing \$75,000 in funds appropriated for the purpose by Resolution No. 2004-25589, dated June 9, 2004; and pursuant to Resolution No. 2005-25784, dated January 27, 2005, which authorized contract negotiations; and further authorizing the appropriation of an additional \$1,015 in Concurrency Mitigation/South Beach funds to cover the negotiated contract price.

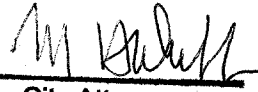
PASSED AND ADOPTED this the _____ day of _____, 2005.

MAYOR

ATTEST:

CITY CLERK

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 5-6-05
City Attorney Date

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND McMAHON ASSOCIATES, INC.
FOR THE PROVISION OF
PHASE I – CONCEPTUAL PLAN SERVICES
FOR
THE 16TH STREET OPERATIONAL IMPROVEMENTS/ENHANCEMENT PROJECT**

THIS AGREEMENT made and entered into this _____ day of _____, 2005, by and between the **CITY OF MIAMI BEACH, FLORIDA** (hereinafter referred to as City), a municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **McMAHON ASSOCIATES, INC.** (hereinafter referred to as Consultant), a Florida corporation, whose address is 730 NW 107th Avenue, Suite 110, Miami, Florida 33172.

**SECTION 1
DEFINITIONS**

Agreement: This Agreement between the City and Consultant.

City Manager: The Chief Administrative Officer of the City.

Consultant: For the purposes of this Agreement, Consultant shall be deemed to be an independent Consultant, and not an agent or employee of the City.

Services: All services, work and actions by the Consultant performed pursuant to or undertaken under this Agreement, as described in Section 2.

Fee: Amount paid to the Consultant to cover the costs of the Services.

Risk Manager: The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139, telephone number (305) 673-7000, Ext. 6435, and fax number (305) 673-7023.

SECTION 2

SCOPE OF WORK

The scope of work to be performed by Consultant is set forth in Exhibit "A", entitled "Scope of Services" (Services).

SECTION 3

COMPENSATION

3.1 FIXED FEE

Consultant shall be compensated for the Services, as set forth in Section 2 and Exhibit "A", in an amount not to exceed Seventy Six Thousand and Fifteen and 00/100 Dollars (\$76,015).

3.2 INVOICING

Consultant shall submit an invoice pursuant to the timeline as set forth in Exhibit "A", upon completion of each of the four (4) Study Tasks therein, which invoices include the purchase order number and a detailed description of the portion of the Services completed.

3.3 METHOD OF PAYMENT

Payments shall be made for Services satisfactorily rendered within thirty (30) days of the date of invoice, in a manner satisfactory to, and as approved and received by, the City. Consultant shall mail all invoices to:

City of Miami Beach
Public Works Department
Attn: Fernando Vazquez, PE
City Engineer
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

SECTION 4

GENERAL PROVISIONS

4.1 RESPONSIBILITY OF THE CONSULTANT

With respect to the performance of the Services, the Consultant shall exercise that degree of skill, care, efficiency and diligence normally exercised by recognized professionals with respect to the performance of comparable Services. In its performance of the Services, the Consultant shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, State of Florida, and Federal Government.

4.2 PUBLIC ENTITY CRIMES

A State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes shall be filed with the City's Procurement Division, prior to commencement of the Services herein.

4.3 DURATION AND EXTENT OF AGREEMENT

The term of this Agreement shall be for a period of one (1) year from the date this Agreement is executed by all parties hereto.

4.4 TIME OF COMPLETION

The Services to be rendered by the Consultant shall be commenced upon receipt of a written Notice to Proceed from the City subsequent to the execution of the Agreement. The Services shall be completed within ten (10) months from a Notice to Proceed, unless additional work is requested and authorized in writing by the City.

4.5 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its employees, agents, sub-consultants, or any other person or entity acting under Consultant's control, in connection with the Consultant's performance of the Services pursuant to this Agreement; and to that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to the Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's Indemnity Agreement.

The Consultant's obligation under this Subsection shall not include the obligation to indemnify the City of Miami Beach and its officers, employees and agents, from and against any actions or claims which arise or are alleged to have arisen from negligent acts or omissions or other wrongful conduct of the City and its officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

4.6 TERMINATION, SUSPENSION AND SANCTIONS

4.6.1 Termination for Cause

If the Consultant shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, the City shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular terms of this Agreement and shall grant Consultant seven (7) days to cure such default. If such default remains uncured after seven (7) days, the City, upon three (3) days' notice to Consultant, may terminate this Agreement and the City shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall additionally be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees. To the extent allowed by law, the defaulting party waives its right to jury trial and its right to bring permissive counter claims against the City in any such action.

4.6.2 Termination for Convenience of City

NOTWITHSTANDING SECTION 4.6.1, THE CITY MAY ALSO, FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE AT ANY TIME DURING THE TERM HEREOF BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE SEVEN (7) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF THE WRITTEN TERMINATION NOTICE. IN THAT EVENT, ALL FINISHED OR UNFINISHED DOCUMENTS AND OTHER MATERIALS, AS DESCRIBED IN SECTION 2 AND IN EXHIBIT "A", SHALL BE PROPERLY ASSEMBLED AND DELIVERED TO THE CITY AT CONSULTANT'S SOLE COST AND EXPENSE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SUBSECTION, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED, AS DETERMINED BY THE CITY AT ITS DISCRETION, UP TO THE DATE OF TERMINATION. PROVIDED, HOWEVER, THAT AS A CONDITION PRECEDENT TO SUCH PAYMENT, CONSULTANT SHALL DELIVER ANY AND ALL DOCUMENTS, MATERIALS, ETC, TO CITY, AS REQUIRED HEREIN.

4.6.3 Termination for Insolvency

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 4.6.2.

4.6.4 Sanctions for Noncompliance with Nondiscrimination Provisions

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as the City, Miami-Dade County, and / or the State of Florida, as applicable, may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies and/or cancellation, termination or suspension of the Agreement. In the event the City cancels or terminates the Agreement pursuant to this Subsection the rights and obligations of the parties shall be the same as provided in Section 4.6.2.

4.7 CHANGES AND ADDITIONS

Changes and additions to the Agreement shall be directed by a written amendment signed by the duly authorized representatives of the City and Consultant. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both parties hereto, and approved by the City Commission of the City.

4.8 OWNERSHIP OF DOCUMENTS

All documents prepared by the Consultant pursuant to this Agreement are related exclusively to the Services described herein, and are intended or represented for ownership by the City. Any reuse distribution, or dissemination of same by Consultant, other than to the City, must be first approved in writing by the City.

4.9 INSURANCE REQUIREMENTS

The Consultant shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager. The Consultant shall maintain and carry in full force during the term of this Agreement the following insurance:

1. Consultant General Liability in the amount of \$1,000,000, naming the City of Miami Beach, Florida, as an additional insured.
2. Consultant Professional Liability in the amount of \$200,000, naming the City of Miami Beach, Florida, as an additional insured.
3. Workers Compensation & Employers Liability as required pursuant to Florida statute.
4. The insurance must be furnished by insurance companies authorized to do business in the State of Florida and approved by the City's Risk Manager.
5. Original certificates of insurance for the above coverage must be submitted to the City's Risk Manager for approval prior to any work commencing. These certificates will be kept on file in the office of the Risk Manager, 3rd Floor, City Hall.
6. The Consultant is solely responsible for obtaining and submitting all insurance

certificates for its sub-consultants.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement, and the City shall have the right to obtain from the Consultant specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required overage.

4.9.1 Endorsements

All of Consultant's certificates, above, shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy.

4.9.2 Certificates

Unless directed by the City otherwise, the Consultant shall not commence any services pursuant to this Agreement until the City has received and approved, in writing, certificates of insurance showing that the requirements of this Section (in its entirety) have been met and provided for.

4.10 ASSIGNMENT, TRANSFER OR SUBCONTRACTING

The Consultant shall not subcontract, assign, or transfer any work under this Agreement in whole or in part, without the prior written consent of the City.

4.11 SUB-CONTRACTORS

The Consultant shall be liable for the Consultant's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of any and all sub-contractors, and any other person or entity acting under the direction or control of the Consultant. When the term "Consultant" is used in this Agreement, it shall be deemed to include any sub-contractors and any other person or entity acting under the direction or control of Consultant. All sub-contractors must be approved in writing by the City prior to their engagement by Consultant.

4.12 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, and national origin, place of birth, marital status, physical handicap, or sexual orientation. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during

their employment without regard to their race, color, religion, ancestry, sex, age, national origin, place of birth, marital status, disability, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or termination; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

4.13 CONFLICT OF INTEREST

The Consultant agrees to adhere to and be governed by the Metropolitan Miami-Dade County Conflict of Interest Ordinance (No. 72-82), as amended; and by the City of Miami Beach Charter and Code, which are incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Consultant. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

4.14 PATENT RIGHTS; COPYRIGHTS; CONFIDENTIAL FINDINGS

Any patentable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, shall be made available to the City for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for copyright or patent by or on behalf of the Consultant or its employees or sub-contractors, without the prior written consent of the City.

4.15 NOTICES

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT: McMahon Associates, Inc.
Attn: Diana L. Ospina
Senior Project Manager
730 NW 107th Avenue, Suite 110
Miami, Florida 33172
(305) 222-1945, Ext. 105

TO CITY: City of Miami Beach
Attn: Fernando Vazquez
City Engineer
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7000, Ext. 6399

Notices hereunder shall be effective:
If delivered personally, on delivery; if mailed to an address in the city of dispatch, on the day following the date mailed; and if mailed to an address outside the city of dispatch on the seventh day following the date mailed.

4.16 LITIGATION JURISDICTION/VENUE

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

BY ENTERING INTO THIS AGREEMENT, THE CONSULTANT AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

4.17 ENTIRETY OF AGREEMENT

This writing and the Services embody the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superceded hereby. The Services and the Proposal Documents are hereby incorporated by reference into this Agreement.

4.18 LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$1,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$1,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
City Clerk

Mayor

FOR CONSULTANT:

McMAHON ASSOCIATES, INC.

ATTEST:

By: _____
Secretary

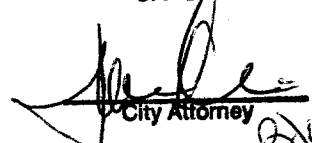
President

Print Name

Print Name

Attachment: Exhibit "A"

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 _____
City Attorney

5/13/05

Date

CITY OF MIAMI BEACH

SCOPE OF SERVICES

FOR

**PHASE I – CONCEPTUAL PLAN REPORT
FOR A PROPOSED SIXTEENTH STREET OPERATIONAL
IMPROVEMENTS AND ENHANCEMENT PROJECT**

I. SCOPE OF WORK METHODOLOGY

McM Associates, Inc. (McM) and its team are pleased to submit the proposed methodology to accomplish the diverse tasks that encompass the Phase I – Conceptual Plan Report for operational improvements and enhancements along Sixteenth Street, from Collins Avenue/A1A to Bay Road. The McM Team prepared this detailed scope of services with the understanding that the City will make use of the results documented in the Conceptual Plan Report to understand and negotiate the various tasks relevant to the Phase II - Design Services for the study corridor.

GOALS AND OBJECTIVES

The main objective of the Phase I - Conceptual Plan Report is to document all the findings and recommendations based on observations and preliminary analysis results from surveys and existing conditions inventories. The Conceptual Plan Report will include a corridor design concept resulting not only from preliminary technical analysis results, but also from input obtained during the various Committee meetings and public workshops. A description of work effort, project schedule and cost estimates for the proposed conceptual plan for corridor improvements and enhancements follows.

TASK 1.1 – DEFINE GOALS AND OBJECTIVES

Subtask 1.1.1 Kickoff Meeting (Consultant and City Staff)

A kickoff meeting between the City Staff and the key personnel from the McM Team will be scheduled to define goals and objectives and discuss in detail the technical approach to the project. Before the kickoff meeting, the McM Team will assemble for an interdisciplinary brainstorming session to prepare and have ready for discussion a comprehensive technical approach to each component of the project, including but not necessarily limited to:

- 1) Briefing on all required field surveys and existing conditions inventory activities.
- 2) Identification of key study issues based on existing conditions.
- 3) Identification of potential study alternatives.
- 4) Preliminary discussions of candidate solutions to issues.
- 5) Identification of additional follow-up needs and review of creative approaches to project issues.

MANHOURS

The projected man-hours required for accomplishing the brainstorming session, coupled with other small-group sessions among Team staff and the meeting between the City staff and McM Key Staff are presented in **Table 1**.

TABLE 1
PRELIMINARY ESTIMATE OF WORK EFFORT
SUBTASK 1.1.1 KICKOFF MEETING

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>1. Team Brainstorming Sessions</i>	
Traffic Group	8
Drainage Group	8
Planning & Architecture Group	8
Surveying & Utility Location Group	8
Geotechnical Group	8
Subtotal	40
<i>2. Meeting with City Staff</i>	
McM Key Staff (3 persons)	6
Subtotal	6
Project Management/Administration (5%)	2
TOTAL	48
McM Team Cost	\$5,520.00

Subtask 1.1.2 Field Surveys and Existing Conditions Inventory

1. Roadway Characteristics Inventory

Physical roadway features or characteristics will be documented from field observations and measurements of the different roadway segments. Standard methods established by Florida Department of Transportation (FDOT) will be followed and the collected data will be summarized and analyzed. Samples of data to be collected include:

- 1) The number and width of roadway lanes, which are key elements in determining existing quality/level of service (LOS) of each transportation mode (auto, bicycle, pedestrian, transit) as well as to plan future improvements and promote a balanced multi-modal transportation system.
- 2) Type and width of shoulders information will be vital aspects for determining accommodation for on-street parking, emergency use, road stability, future widening, etc.

2. Parking Inventory

A comprehensive parking inventory will be conducted to assemble information about the location, capacity and other pertinent characteristics of existing parking spaces at the curb and in off-street areas, including alleys and spaces between buildings. Parking information to be collected includes:

- 1) Number of parking spaces.
- 2) Time limits and hours of operation.
- 3) Ownership (public, private or restricted to employees or customers of a particular building).
- 4) Rates (if any) and method of fee collection.
- 5) Type of regulation at curb spaces (loading zone, passenger zone, taxi zone or bus zone).
- 6) Type of facility (lot or garage).
- 7) Probable degree of permanency (good conditions, poorly maintained, temporary nature, expected to be replaced with new construction, etc).

3. Accident and Crash Reports

An integral part of the data gathering effort will involve the collection of the most recent accident data for the project facility. The McM Team knows that accident severity and frequency are important parameters in determining inadequacies of any facility. In addition, analysis of these parameters will offer a good insight into the need or advisability of providing geometric, operational or other features geared towards the elimination or mitigation of accident potential. Data obtained from the City of Miami Beach Police and FDOT databases for years 2002 through 2004 will be compiled and evaluated.

4. Drainage Conditions

The McM Team will conduct a preliminary field review to document the existing condition of the storm water system and identify potential flooding areas. A meeting with Miami-Dade County Department of Environmental Resources Management (DERM) and Public Works will be scheduled to verify the governing agency's water quality criteria, flood protection LOS, and environmental permitting requirements. All the information obtained will be documented and included in the Conceptual Plan Report.

5. Other Utilities Inventory

Inventory of surface and overhead utilities and designation of these existing utilities will be conducted and used as a base for preparing survey preliminary drawings. Meetings with the utilities suppliers will be scheduled to corroborate the inventory and investigate planned utilities projects.

6. Landscaping Inventory

Knowledgeable personnel will inventory and classify the existing landscaping along the corridor.

7. Urban Design Opportunities

The approach to the design implementation of the corridor would be to establish a strong concept of a livable community taking into consideration the mixed-use character of the area and follow through with detailed design. It will be our intent to develop all aspects of the corridor that would include but not necessarily be limited to:

- 1) Conceptual Roadway Corridor Design
- 2) Planting
- 3) Irrigation
- 4) Lighting
- 5) Pedestrian circulation
- 6) Graphics and banners
- 7) Benches, trash receptacles, etc.

8. Existing Conditions and Findings Documentation

The observations and results from field surveys and existing condition inventories will be documented and presented to the Team members for a comprehensive evaluation of the existing conditions and characteristics of the study corridor. In this exercise, the McM Team will discuss ideas and develop a clear understanding of what actually exists and what is the most feasible approach for providing operational improvements and enhancements to the Sixteenth Street corridor. Conclusions

resulting from this effort will be documented in an Existing Conditions and Findings Memorandum.

MANHOURS

The projected man-hours required for accomplishing the field surveys and existing condition inventories and documenting findings for the Sixteenth Street corridor project are presented in **Table 2**.

TABLE 2
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.1.2 FIELD SURVEYS AND EXISTING CONDITION INVENTORIES

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
1. <i>Roadway Characteristics Inventory</i>	12
2. <i>Parking Inventory</i>	8
3. <i>Accident and Crash Reports</i>	24
4. <i>Drainage Conditions</i>	
Site Reconnaissance Visit	8
Existing Data Collection	16
Meeting with Miami-Dade County DERM	4
5. <i>Other Utilities Replacement</i>	
Surface and Overhead Inventory and Designation of Existing Utilities	12
Survey Preliminary Drawings	24
Meeting with Utilities Suppliers	6
6. <i>Landscaping Inventory</i>	
Field Inventory	8
Classification/Documentation	8
7. <i>Urban Design Opportunities</i>	
Visual Analysis	32
Opportunities and Constrains Plan	32
8. <i>Existing Conditions and Findings Documentation</i>	
Existing Conditions and Findings Documentation	40
Project Management/Administration (5%)	12
TOTAL	246
McM Team Cost	\$28,290.00

Subtask 1.1.3 Define Goals and Objectives for the Study Pursuant to Results of the Field Survey and Existing Condition Inventory

The conclusions documented in the Existing Conditions and Findings Memorandum will drive a brainstorming session, which will enable the Team to discuss ideas and develop the matrix of viable conceptual alternatives for the Sixteenth Street corridor. These alternatives will be documented and used as a base for the development of the Corridor Conceptual Plan. At this stage, a Draft Corridor Conceptual Plan Report will be prepared. This report will document the existing conditions, findings and recommendations and the development of the most viable conceptual alternatives.

MANHOURS

The effort required for developing the viable conceptual alternatives pursuant to the results of the surveys and existing condition inventories effort will involve a number of Team staff brainstorming meetings. The projected man-hours are presented in Table 3.

**TABLE 3
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.1.3 DEFINE GOALS AND OBJECTIVES PURSUANT TO RESULTS
OF FIELD SURVEYS AND EXISTING CONDITIONS INVENTORY**

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>1. Team Brainstorming Sessions to Develop Conceptual Alternatives</i>	
Traffic Group	12
Drainage Group	12
Planning & Architecture Group	12
Surveying & Utility Location Group	12
Subtotal	48
<i>2. Documentation</i>	
Draft Corridor Conceptual Plan Report	40
Subtotal	40
Project Management/Administration (5%)	4
TOTAL	92
McM Team Cost	\$10,580.00

TASK 1.2 - DEVELOP SIXTEENTH STREET CORRIDOR CONCEPTUAL PLAN

Subtask 1.2.1 Visioning Session with Technical Committee

A meeting with the City Technical Committee will be scheduled to review the goals and objectives as envisioned by the McM Team, based on the findings from the existing conditions evaluation and the developed viable alternatives.

Subtask 1.2.2 Develop Conceptual Plan Based on Input Received from the Technical Committee

Based on the Visioning Session and existing conditions results, the process of narrowing down the alternatives to the most feasible conceptual plan will be undertaken. This plan will entail a combination of recommended improvements and enhancements including, but not limited to:

- 1) Operational and safety improvements to the corridor, intersections and signalization.
- 2) Reconstruction or milling, resurfacing and striping of roadway.
- 3) Utility relocation.
- 4) Sidewalk.
- 5) Curb and gutter.
- 6) Street lighting.
- 7) Bicycle and pedestrian features.
- 8) Parking facilities.
- 9) Traffic calming devices.
- 10) Landscaping.
- 11) Graphics and banners.

Subtask 1.2.3 Present Conceptual Plan to Transportation and Parking Committee

A meeting with the Transportation and Parking Committee will be scheduled to present the proposed preliminary Corridor Conceptual Plan to reach a consensus and identify the preferred alternatives for the improvements and enhancements along the corridor.

Subtask 1.2.4 Hold Community Workshop No. 1

The first community workshop will be held for residents and other stakeholders to express their concern and priorities. Comments and recommendations obtained during the workshop will be documented and taken into consideration for potential modifications to the plans once they are approved by the City and the participant Committees.

MANHOURS

The effort required to develop the Preliminary Sixteenth Street Corridor Conceptual Plan Report is summarized in **Table 4**.

TABLE 4
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.2 DEVELOP SIXTEENTH STREET CORRIDOR
CONCEPTUAL PLAN

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>Subtask 1.2.1 Meet with Technical Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
<i>Subtask 1.2.2 Develop Conceptual Plan</i>	
Develop Initial Concepts (up to 3)	60
Subtotal	60
<i>Subtask 1.2.3 Present Conceptual Plan to Transportation & Parking Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
<i>Subtask 1.2.4 Hold Community Workshop No. 1</i>	
Prepare Presentation Materials	20
Key Team Staff Attendance (4)	20
Subtotal	40
Project Management/Administration (5%)	6
TOTAL	118
McM Team Cost	\$13,570.00

TASK 1.3 - DRAFT SIXTEENTH STREET CONCEPTUAL PLAN REPORT

Subtask 1.3.1 Prepare a Draft Conceptual Plan Report for the Project

Based on the input received at the three introductory meetings, a Draft Conceptual Plan Report will be prepared including an executive summary, a report of existing conditions, and the preferred conceptual plan. This Draft Conceptual Plan Report will also include preliminary calculations, review of schedule, a map illustrating all proposed improvements and a summary of the permitting process.

Subtask 1.3.2 Meet with Technical Committee for Draft Conceptual Plan Review

A meeting with the Technical Committee will be scheduled to review the proposed draft of the Preferred Corridor Conceptual Plan and preliminary cost estimates.

Subtask 1.3.3 Presentation/Final Discussion with Transportation and Parking Committee

A final meeting with the Transportation and Parking Committee will be held to present the draft of the preferred Corridor Conceptual Plan and preliminary cost estimates.

MANHOURS

The effort required to develop the Draft Sixteenth Street Conceptual Plan Report is summarized in **Table 5**.

TABLE 5
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.3 DEVELOP DRAFT SIXTEENTH STREET CONCEPTUAL PLAN REPORT

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>Subtask 1.3.1 Prepare Conceptual Plan</i>	
Develop Preferred Concept	32
Provide Illustrative Street Sections (up to 3)	16
Provide Preliminary Order of Magnitude Quantities	16
Subtotal	64
<i>Subtask 1.3.2 Meet with Technical Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
<i>Subtask 1.3.3 Final Presentation to Transportation & Parking Committee</i>	
Traffic Group	3
Planning & Architecture Group	3
Subtotal	6
Project Management/Administration (5%)	4
TOTAL	80
McM Team Cost	\$9,200.00

TASK 1.4 – FINAL SIXTEENTH STREET CONCEPTUAL PLAN REPORT

Subtask 1.4.1 Prepare a Final Conceptual Plan Report for the Project

Based on the final input received from the participant Committees and Community, the Final Conceptual Plan Report for the Project will be prepared. The Conceptual Plan Report will be a comprehensive source to serve as the basis for planning the design phase for the Sixteenth Street Corridor.

Subtask 1.4.2 Review Final Conceptual Plan with City and Applicable Regulatory Agencies

The McM Team will make sure that the Final Conceptual Plan Report includes all the revisions implemented during reviews with the City and regulatory agencies. Three meetings will be scheduled with the City, County and State representatives.

Subtask 1.4.3 Present Final Conceptual Plan at City Commission Meeting for Approval

The McM Team will present the final Conceptual Plan at a City Commission Meeting for approval.

Subtask 1.4.4 Present Approved Final Conceptual Plan to the Metropolitan Planning Organization's (MPO) Transportation Planning Council

Key staff of the McM Team will present the Adopted Conceptual Plan to the MPO Transportation Planning Council.

MANHOURS

The effort required for developing the Final Sixteenth Street final Conceptual Plan Report is summarized in **Table 6**.

TABLE 6
PRELIMINARY ESTIMATE OF WORK EFFORT
TASK 1.4 DEVELOP FINAL SIXTEENTH STREET CONCEPTUAL PLAN

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
<i>Subtask 1.4.1 Prepare Final Conceptual Plan</i>	
Refine Draft Conceptual Plan	20
Provide Vignette Sketches (up to 3)	12
Prepare Documents for Conceptual Plan Report	8
Subtotal	40
<i>Subtask 1.4.2 Review Final Conceptual Plan with City and Applicable Agencies</i>	
Attend 3 Meetings (City, County, State)	9
Subtotal	9
<i>Subtask 1.4.3 Present Final Conceptual Plan to City Commission</i>	
Prepare Presentation Materials	6
Key Team Staff Attendance (3)	6
Subtotal	12
<i>Subtask 1.4.4 Present Conceptual Plan to MPO-TPC</i>	
Prepare Presentation Materials	6
Key Team Staff Attendance (3)	6
Subtotal	12
Project Management/Administration (5%)	4
TOTAL	77
McM Team Cost	\$8,855.00

II. SUMMARY OF PROPOSED COST ESTIMATE TO COMPLETE PROJECT PHASE I – CONCEPTUAL PLAN REPORT

TABLE 7
SUMMARY OF TOTAL PROPOSED COST ESTIMATE
FOR PROJECT PHASE I – CONCEPTUAL PLAN REPORT

DESCRIPTION OF TASK	MAN-HOUR ESTIMATE
TASK 1.A Define Goals and Objectives	\$44,390
TASK 1.B Existing Conditions Data Collection and Findings	\$13,570
TASK 1.C Development of Preliminary Sixteenth Street Conceptual Plan	\$9,200
TASK 1.D Development of Final Sixteenth Street Conceptual Plan	\$8,855
TOTAL McM Team Cost	\$ 76,015.00

II. TIMELINE AND PAYMENT SCHEDULE **FOR PROJECT PHASE I – CONCEPTUAL PLAN REPORT**

The McM Team agreed that the effort to conduct surveys, tests, data collection, analysis, presentations, and prepare the Final Sixteenth Street Conceptual Plan Report will be conducted within a time period of nine months. The McM Team is prepared to start working on the project as soon as the City provides the McM Team the Notice to Proceed, abiding by the following timeline and payment schedule:

	Timeline	Payment Schedule
TASK 1.1 – DEFINE GOALS AND OBJECTIVES:	3 Months	\$44,390
Subtask 1.1.1 Kickoff Meeting (McM and City Staff)		
Subtask 1.1.2 Field Surveys and Existing Conditions Inventory		
Subtask 1.1.3 Define Goals and Objectives for the Study Pursuant to Results of the Field Survey and Existing Conditions Inventory		
TASK 1.2 - DEVELOP 16th St. CONCEPTUAL PLAN:	2 Months	\$13,570
Subtask 1.2.1 Visioning Session with Technical Committee		
Subtask 1.2.2 Develop a Conceptual Plan, based on input received from the Technical Committee		
Subtask 1.2.3 Present Conceptual Plan to the Transportation and Parking Committee		
Subtask 1.2.4 Hold Community Workshop No. 1		
TASK 1.3 - DRAFT CONCEPTUAL PLAN REPORT:	2 Months	\$9,200
Subtask 1.3.1 Prepare a Draft Conceptual Plan Report		
Subtask 1.3.2 Meet with Technical Committee for Draft Conceptual Plan review		
Subtask 1.3.3 Presentation/Final Discussion with Transportation and Parking Committee		
TASK 1.4 – FINAL CONCEPTUAL PLAN REPORT:	2 Months	\$8,855
Subtask 1.4.1 Prepare a Final Conceptual Plan Report		
Subtask 1.4.2 Review Final Conceptual Plan with City and Applicable Regulatory Agencies		
Subtask 1.4.3 Present the Final Conceptual Plan at City Commission Meeting for Approval		
Subtask 1.4.4 Presentation of Approved Final Conceptual Plan to the MPO's Transportation Planning Council		
TOTAL PHASE I SCHEDULED PAYMENTS:	9 Months	\$76,015

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING SUBJECT TO FINAL APPROVAL OF SAME BY THE AUTHORIZED OFFICIALS IN MIAMI-DADE COUNTY, THE PROPOSED FINAL PLAT OF "MEADOWOOD GARDENS", A REPLAT OF LOTS 1 THROUGH 12, BLOCK 1 AND TRACTS "A-9", "B-9" AND "C-9" OF LINDISFARNE ON FISHER ISLAND SECTION 9, AS RECORDED IN PLAT BOOK 149, PAGE 86 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TOGETHER WITH A PORTION OF UNSUBDIVIDED SECTION 10, TOWNSHIP 54 SOUTH, RANGE 42 EAST, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY FLORIDA.

WHEREAS, the "Lindisfarne on Fisher Island-Section 9" plat composed of 12 lots presently owned by Fisher Island Holdings LLC, was approved by the City Commission on September 16, 1996 pursuant to City of Miami Beach Resolution #96-22106 and recorded in Plat Book 149, Page 86 of the Public Records of Miami-Dade County following the City Commission's amending the comprehensive zoning ordinance, creating the RM-PRD (Multi-Family, Planned Residential Development) to accommodate uses ranging from single family detached dwellings to multi-family townhomes and apartments; and

WHEREAS, Fisher Island Holdings LLC is now proposing to re-plat the "Lindisfarne on Fisher Island-Section 9" together with a portion of unsubdivided Section 10, Township 54 South, Range 42 East into plat named "Meadowood Gardens", to eliminate the subdivided parcels and portions of easements created under the "Lindisfarne on Fisher Island-Section 9" plat; and

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission herein accept and approve, subject to final approval of same by the authorized officials in Miami-Dade County, the proposed final plat of "Meadowood Gardens", being a replat of Lots 1 through 12, Block 1 and Tracts "A-9", "B-9" and "C-9" of Lindisfarne on Fisher Island Section 9, as recorded in Plat Book 149, page 86 of the public records of Miami-Dade County, Florida, together with a portion of unsubdivided Section 10, Township 54 south, Range 42 east, City of Miami Beach, Miami-Dade County Florida., together with all the noted dedications and easements therein.

PASSED and ADOPTED this _____ day of _____, 2005

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney
5/13/05
Date

Agenda Item CTK
Date 5-18-05

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**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

Ordinance amending Ordinance No. 92-2813, the Defined Contribution Retirement Plan 401(a) to increase the maximum monthly retirement benefit to reflect annual cost of living increases.

Issue:

Shall the City amend the 401(a) Defined Contribution Retirement Plan Ordinance to allow for the maximum monthly retirement disability benefit to be changed from a maximum of \$5,000 to \$10,000 to allow for annual cost of living increases since inception of the plan and in the future, to allow the maximum monthly benefit to be changed by Resolution when the Long Term Disability contract is renewed or awarded?

Item Summary/Recommendation:


Approve the Ordinance on first reading and schedule a second reading, public hearing to amend the 401(a) Defined Contribution Retirement Plan Ordinance No. 92-2813 to increase the maximum monthly retirement benefit to \$10,000 to reflect annual cost of living increases and in the future to allow the maximum monthly benefit to be amended by Resolution at the time the LTD contract is renewed or amended.

The Administration recommends approving the resolution.

Advisory Board Recommendation:

N/A


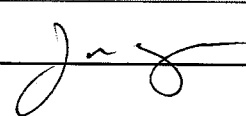
Financial Information:

Source of Funds:  Finance Dept.		Amount	Account	Approved
	1	\$75,000	011.9611.000375	
	2			
	3			
	4			
	Total			

City Clerk's Office Legislative Tracking:

Mayra D. Buttacavoli, Director of Human Resources & Risk Management

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		

T:\AGENDA\2005\May1805\Regular\summary amend 401(a)\ord92-2813.doc

AGENDA ITEM RSF
DATE 5-18-05

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: May 18, 2005

From: Jorge M. Gonzalez
City Manager

FIRST READING

Subject: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 92-2813, THE DEFINED CONTRIBUTION RETIREMENT PLAN 401(A), BY AMENDING THE PROVISIONS OF SECTION 1, ARTICLE 5, SUBSECTION 5.03 TO INCREASE THE MAXIMUM MONTHLY RETIREMENT DISABILITY BENEFIT TO REFLECT ANNUAL COST OF LIVING INCREASES; PROVIDING FOR A REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

Approve the Ordinance on the first reading and schedule a second reading, public hearing.

ANALYSIS

Ordinance No. 92-2813 that created the Defined Contribution Retirement Plan under section 401(a) of the Internal Revenue Code, was written in 1992 and included a maximum monthly retirement benefit that was equal to two-thirds of an employee's annual earnings, with a maximum monthly benefit of \$5,000. This maximum benefit amount covers a salary up to \$90,000. No provision was made in the Ordinance to increase this maximum covered amount.

Since 1993 the City has provided several cost of living increases, ranging between 2% and 6%, based on amounts given to Unclassified employees. If these cost of living increases, including 2005, had been applied to the maximum covered salary of \$90,000, that covered amount would now be \$140,000, or a monthly benefit not to exceed \$7,700. Insurance companies quote long term disability premiums based on increments of \$1,000 for covered benefit amounts.

The Administration recommends that the Ordinance be changed to allow for past cost of living increases, a projected 3.5% increase for 2006, estimated increases between 3.0 and 3.5% for the next two years, thereby establishing a new monthly benefit maximum of \$10,000 (covered salary of up to \$180,000). The Administration also recommends that the Ordinance include language so that the maximum monthly amount may be amended by Resolution to include future cost of living increases whenever the Long Term Disability contract for coverage is renewed or awarded.

FISCAL IMPACT

The fiscal impact of this amendment will result in an increase in the maximum monthly benefit of \$5,000 to \$10,000 to those employees who are in the 401(a) retirement system, if they face a long-term disability. The estimated annual cost of the current benefit level under the existing contract is \$79,738. The cost of the current benefit level under the new proposed rates would result in an estimated annual cost of \$61,615. Therefore, the total potential savings on an annual basis is \$18,123. A companion item on this agenda awards a contract to a long term disability company, Jefferson Pilot Financial, with an estimated annual cost of \$68,899 for an increased maximum monthly benefit of \$10,000. This proposed Ordinance will reduce the potential savings by \$7,284, therefore resulting in an estimated annual savings of \$10,839.

CONCLUSION

The Administration recommends the City Commission approve the first reading and schedule a second reading, public hearing.

JMG:MDB:ph

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 92-2813, THE DEFINED CONTRIBUTION RETIREMENT PLAN 401(A), BY AMENDING THE PROVISIONS OF SECTION 1, ARTICLE 5, SUBSECTION 5.03 TO INCREASE THE MAXIMUM MONTHLY RETIREMENT DISABILITY BENEFIT TO REFLECT ANNUAL COST OF LIVING INCREASES ; PROVIDING FOR A REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1: That Section 1, Establishment of a Defined Contribution Retirement Plan for the City, Article 5, Subsection 5.03 of the Defined Contribution Retirement Plan 401(a) Ordinance No. 92-2813 shall be amended to read as follows:

ARTICLE 5: Retirement

Subsection 5.03 Any employee who is totally and permanently disabled and unable to carryout the requirements of their position in City Service shall be entitled to a disability retirement. Such disability retirement benefit shall be equal to two-thirds of the employee's annual earnings, adjusted to include cost of living increases provided to employees, based on the percent increase given to Unclassified Employees, provided that such benefit shall not exceed ~~\$5,000~~ \$10,000 a month. This maximum monthly amount will be updated by Resolution to include future cost of living percent increases, based on the amount given to Unclassified employees, whenever the Long Term Disability contract for coverage is renewed or awarded. This disability payment will commence upon the completion of the sixth month of such disability and continue throughout the life of the disabled employee. The City shall be obligated to purchase an insurance policy for employees in this System which shall provide this benefit. An offset to the fullest extent allowed by law for all payments made to the disability retiree for worker's compensation payments, shall be taken by the Board of Trustees. The Board of Trustees shall consider all requests for total and permanent disability, and shall make positive recommendations to the insurer of all employees whom it determines meet the insurer's criteria for the total and permanent disability. The final determination of disability shall be made by the insurer.

SECTION 2: REPEALER.

That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3: SEVERABILITY.

If any section, sentence, clause, or provision of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4: CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5: EFFECTIVE DATES.

This Ordinance shall take effect the _____ day of _____, 2005.

PASSED and ADOPTED this _____ day of _____, 2005.

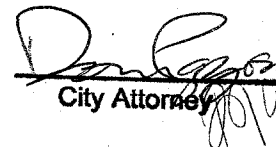
MAYOR

ATTEST:

CITY CLERK

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 5/10/05
City Attorney Date

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: 5/18/2005

From: Jorge M. Gonzalez
City Manager

Subject: **SUPPLEMENTAL INFORMATION FOR ITEM R7B (FIFTH AND ALTON
DEVELOPMENT AGREEMENT)**

Attached, please find additional amendments to the Development Agreement with AR&J SOBE, Inc., for the project located at Fifth Street and Alton Road. These amendments have been proposed in order to address any future code-required parking issues that may arise due to the inclusion of a restaurant (or other more intensive use) within the project.

Pages 7-8

In order to satisfy ownership/control of required parking spaces, this section specifies that up to 30 of the proposed surplus parking spaces will be owned jointly by the City and the Developer, each with 50% interest, although the City shall be deemed sole owner of these spaces for purposes of construction funding, allocation of revenues and expenses, condemnation, and Fair Market Value calculations. The Developer will be responsible for the payment of any taxes that may be assessed on these 30 spaces. This represents an increase of 16 spaces from the 14 spaces staff had agreed to with the Developer as of last week. It should be noted that although the spaces proposed for joint-ownership were already open for public use, the presence of a restaurant in the project theoretically increases the revenue to the garage because the restaurant use is not subject to validation.

Since this represents a last minute change that was not discussed prior to Monday, May 16, 2005, and since the need for the additional 16 spaces has not yet materialized, the Administration recommends that the number of joint-owned spaces remain at 14 in number and that the Developer and staff return with an amendment to the Development Agreement to address the Code required parking prior to occupational license being issued for the more intensive use.

Additionally, when this concept was originally agreed upon, language was added to the Declaration section on pages 82 and 83 of the Draft Agreement distributed with the agenda that established a separate rate for restaurant patrons. The staff and the Developer have subsequently agreed that the rate to be established for restaurant patrons will be no less than the rates charged by the City in its parking garages as established by the City Commission from time to time. The Administration recommends that this provision be approved by the Commission at Second Reading.

Page 62 (Section 22.20)

Pursuant to City Code, if more than one year has passed since the project receives its initial certificate of occupancy for the Project, and a use with a higher code-required

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parking requirement begins operations in the project, rather than providing the additional spaces on site, the Developer has the alternative of paying the Fee-In-Lieu of Providing Parking. The attached amendment provides that, at any time in the future, the fee to be paid shall be the current rate of \$15,000 per space, whether or not the City has increased the fee during the elapsed time.

The Administration recommends that the current rate of \$15,000 be available for this purpose for the initial six years following the issuance of the initial certificate of occupancy.

The Developer is requesting the current rate for a period of 11 years.

Page 83

Language has been added to this section that allows the Developer to reduce the number of Public Passes by the number of spaces (currently contemplated to be 30) that are jointly owned by the City and the Developer, which are referenced on pages 7-8. The Developer has proposed that the use of these spaces for restaurant use is to be considered separate and apart from the 150 spaces that the Developer can use in the event of a parking issue that adversely affects the retail use of the facility.

As a separate issue, the developer has requested that the Commission Memo be revised to reflect the following:

1. The City actually owns a portion of the land below the above-ground structure for tax purposes. However, this ownership has no cash value since the City did not pay for it. The City also does not have any control over this property.
2. With regard to the changes between First and Second Reading where the Market Price is determined by the arm's-length offer of a third party (as opposed to the FMV Method) the Developer has requested that it be clarified that the third party offer will be subject to the FMV fraction and the actual amount presented to Developer will be the third party offer reduced by 44%.

The negotiated language to address this comment raised at First Reading has the effect of discounting the value of an arm's-length offer. Therefore, the Administration's recommendation is to maintain the agreement where this matter is concerned as it was presented at First Reading. This would mean that the Developer's Right of First Refusal would be the greater of: the full amount of the City's contribution, less specified deductions, without interest; or Fair Market Value as defined in this agreement multiplied by the fraction plus the City's contribution for the elevator.

JMG/TH/kc

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Attachment

unreasonably withheld and is deemed given in respect of Robin Bosco Architects and Planners, Inc. and STA Architectural Group).

"Brownfield Redevelopment Act" means the Florida Brownfield Redevelopment Act, Section 376.77, et. seq., Florida Statutes (1997).

"Building Permit" means a "full building permit" as such term is defined in the Land Development Regulations, issued by the Building Department of the City, which allows buildings or structures to be erected, constructed, altered, moved, converted, extended or enlarged for any purpose, in conformity with applicable codes and ordinances.

"Business Day" or **"business day"** means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

"City" means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"City Code" means the Code of the City of Miami Beach, Florida, as amended through the date hereof and as hereafter amended to the extent permitted herein or by applicable law.

"City Commission" means the Mayor and City Commission of the City of Miami Beach, Florida, the governing body of the City, or any successor commission, board or body in which the general legislative power of the City shall be vested.

"City Elevator" means the elevator and elevator bank to be conveyed to the City, located at the northwest corner of the Improvements and comprising a part of the Transit Elements (which will stop at all floors of the Transit Facility), together with an easement from the Transit Facility Dedication Area to the City Elevator for use by the general public for ingress and egress between such areas. Developer shall perform routine day to day maintenance of the City Elevator at its cost (such as sweeping and cleaning). Developer shall perform all other maintenance, repairs and replacement of the City Elevator, including obtaining a service contract for maintenance that is subject to City's reasonable approval, at the City's cost, based on a budget reasonably approved by the City and subject to annual reconciliation, and this obligation shall survive any termination of this Agreement.

"City Improvements" means the City Spaces and the other Transit Elements. The City Improvements are to be constructed by Developer as part of the Project.

"City Manager" means the chief administrative officer of the City or his or her designee.

✓ **"City Spaces"** means the 535 parking spaces within the Transit Facility that are to be conveyed to the City and located substantially as shown on Exhibit "I" hereto. The City Spaces shall be comprised of the "City Supermarket Spaces" and "City Non-Supermarket Spaces", as defined below. Anything in this Agreement to the contrary notwithstanding, in order to satisfy potential FAR, parking and governmental requirements, up to 30 (the precise number of which shall be determined by Developer based on the governmental parking requirements imposed for the issuance of the building permits and final certificate of occupancy for the

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✓ Project) of the City Non-Supermarket Spaces shall be owned jointly by the City and the Developer as tenants in common, each as to an undivided 50% interest (and Developer shall retain said 50% interest when it conveys said up to 30 spaces to City), but (i) for purposes of City's Transit Facility Contribution, the allocation of Revenues and Operating Expenses, allocation of payment in the event of condemnation, determination of the purchase price in the event of a sale and all similar purposes under the Declaration, City shall be deemed the sole owner of such up to 30 spaces, (ii) Developer shall, to the extent an exemption from taxes would otherwise be available in respect of said up to 30 spaces, pay any taxes in respect of said spaces (otherwise, City shall pay taxes on said spaces), (iii) Developer may, at any time convey its interest in any or all of said up to 30 spaces to the City for no additional consideration, and the City shall accept such conveyance and (iv) such up to 30 spaces shall, at Developer's option, be the last spaces to be reconveyed to Developer in the case of a condemnation, and if any of said up to 30 spaces are at any time condemned, City shall, for no consideration, convey to Developer, at Developer's option, an equivalent interest in other City Non-Supermarket Spaces (or Supermarket Spaces, if there are no more City Non-Supermarket Spaces) so that Developer will continue to own, after the condemnation, if it so elects, up to the same number of spaces that it owned prior to the condemnation as a 50% co-tenant. The provisions of the foregoing will be incorporated into and implemented by the Declaration at the time of its preparation.

"City Non-Supermarket Spaces" shall mean all of the City Spaces less the City Supermarket Spaces.

"City Supermarket Spaces" shall mean that portion of the City Spaces equal to 97 parking spaces for the contemplated supermarket user.

"City's Consultant" means such Person as City may designate in writing to Developer from time to time.

"City's Transit Facility Contribution" shall mean approximately \$16,395.03 per parking space (being calculated by taking \$8,771,340 and dividing same by the actual number of City Spaces) constituting the City Spaces plus an additional sum equal to the actual Hard Costs and Soft Costs incurred by Developer for the City Elevator plus an additional sum equal to the actual Hard Costs and Soft Costs incurred by Developer for the Transit Facility Dedication Area Finishes (but in no event to exceed \$356,187.60 for the City Elevator and \$118,204.80 for the Transit Facility Dedication Area Finishes) plus the additional sum of \$333,333 for the Transit Facility Dedication Area, all of which shall be disbursed by City pursuant to Section 6.2 of this Agreement.

"Commence Construction" or "Commencement of Construction" means the commencement of major work (such as installing pilings or pouring foundations) for construction of the Project in accordance with the Plans and Specifications. Any and all preliminary site work (including, without limitation, any environmental re-mediation and ancillary demolition or site preparation work, including installation of forms for foundations) shall not be deemed to be Commencement of Construction.

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Non-Supermarket Spaces shall be owned jointly by the City and the Developer as tenants in common, each as to an undivided 50% interest (and Developer shall retain said 50% interest when it conveys said up to 30 spaces to City), but (i) for purposes of City's Transit Facility Contribution, the allocation of Revenues and Operating Expenses, allocation of payment in the event of condemnation, determination of the purchase price in the event of a sale and all similar purposes under the Declaration, City shall be deemed the sole owner of such up to 30 spaces, (ii) Developer shall, to the extent an exemption from taxes would otherwise be available in respect of said up to 30 spaces, pay any taxes in respect of said spaces (otherwise, City shall pay taxes on said spaces), (iii) Developer may, at any time convey its interest in any or all of said up to 30 spaces to the City for no additional consideration, and the City shall accept such conveyance and (iv) such up to 30 spaces shall, at Developer's option, be the last spaces to be reconveyed to Developer in the case of a condemnation, and if any of said up to 30 spaces are at any time condemned, City shall, for no consideration, convey to Developer, at Developer's option, an equivalent interest in other City Non-Supermarket Spaces (or Supermarket Spaces, if there are no more City Non-Supermarket Spaces) so that Developer will continue to own, after the condemnation, if it so elects, up to the same number of spaces that it owned prior to the condemnation as a 50% co-tenant. The provisions of the foregoing will be incorporated into and implemented by the Declaration at the time of its preparation.

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"Commence Construction" or "Commencement of Construction" means the commencement of major work (such as installing pilings or pouring foundations) for construction of the Project in accordance with the Plans and Specifications. Any and all preliminary site work (including, without limitation, any environmental re-mediation and ancillary demolition or site preparation work, including installation of forms for foundations) shall not be deemed to be Commencement of Construction.

(i) they are not in conflict with the laws and policies governing this Development Agreement and do not prevent development of the land uses, intensities, or densities in this Development Agreement; or

(ii) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

(iii) they are specifically anticipated and provided for in this Development Agreement; or

(iv) the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of Development Agreement; or

(v) this Development Agreement is based on substantially inaccurate information supplied by Developer.

Section 22.19 Survival.

Upon expiration or termination of this Development Agreement for any reason, the following provision shall nevertheless survive and remain in full force and effect (in addition to any other terms or provisions which specifically state that they shall survive, which shall survive without being specifically recited in this Article): the provisions of Sections 2.8(b)(v) and (vi), Section 5.3 as provided therein, Sections 17.2, 17.3, 17.4 and 17.7 to the extent applicable to matters that survive termination, Section 18.1 and Article 23 of this Agreement, excluding Section 23.18(b). Anything in this Agreement to the contrary notwithstanding, the provisions that survive termination after Substantial Completion shall inure to the benefit of the Developer's successors and assigns, whether or not they are permitted assignees under this Agreement. Further, upon expiration or termination of this Development Agreement for any reason prior to the conveyance of the Transit Facility Dedication Area, the City shall be deemed to have irrevocably elected to have exercised its option to acquire the Transit Facility Dedication Area, and to pay for same and the Transit Facility Dedication Area Finishes, as contemplated by the Vacation Agreement and Vacation Resolution, which Vacation Resolution and Vacation Agreement shall survive termination of this Agreement and the Parties shall be bound thereby. This provision shall survive termination or expiration of this Agreement.

Section 22.20 Impact Fee Payment for Additional Parking.

If, at any time from one year following the issuance of the initial certificate of occupancy for the Improvements through 10 years thereafter, Developer requires additional parking spaces to satisfy governmental code requirements due to a change in use of the Project to a more parking intensive use (for example, conversion of retail space to restaurant use), Developer shall have the right to satisfy such need for additional parking spaces by payment of an impact fee equal to \$15,000 for each additional space needed. Thereafter, Developer shall have the right to satisfy such need for additional parking spaces by payment of an impact fee equal to the then going rate charged by the City for each additional space needed. The provisions of this Section 22.20 shall survive termination of this Agreement.

patterns at least quarterly (with a view toward maximizing Garage revenues and public/transit parking consistent with demonstrable Retail Space parking demand; provided, however, the maximum number of decals/access cards to be allowed during Retail Hours shall be consistent with the City's policy for other City owned or operated garages unless Developer approves of a different number in its sole discretion). Developer shall have a continuing and on-going priority right over anyone else to (A) reduce the number of Public Passes by up to 30 (the precise number to be based on the number of City Spaces that are jointly owned by City and Developer as tenants in common, each as to an undivided 50% interest) without payment of any sum if a restaurant is operating in the Retail Space and (B) purchase up to 150 Public Passes (exclusive of the reduction in Public Passes implemented pursuant to (A) above, if any) for use by the Retail Space occupants, their customers and employees during Retail Hours at a cost per Public Pass that is the same as the lowest comparable rate offered to third parties in the Garage. Developer may, from time to time as needed, purchase all or any Public Passes that Developer is entitled to purchase and/or surrender any or all Public Passes that Developer shall have purchased (upon surrender, those Public Passes that were so surrendered shall once again be available for sale to the public). If at any time, the code required parking falls below 643 parking spaces by virtue of a change in use of the contemplated supermarket user, those parking spaces that are no longer needed to satisfy code shall be available for public/transit parking, subject to the limitations contained elsewhere in this Declaration. The maximum number of Public Passes that may be outstanding during other than Retail Hours shall be reasonably, in good faith and mutually agreed upon by the Parties, subject to the other limitations set forth in this Agreement. Decals/access cards (including those for transit users) and special event permits will be coded separately for parking during Retail Hours and other hours to maximize potential Garage revenues while assuring at the same time reasonably sufficient and orderly parking for the Retail Space occupants. It is the intent of this subparagraph that the City and Developer reasonably cooperate with each other to implement a parking operation that promotes use of the Garage as a transit accessible facility, maximizes the revenues of the Garage and addresses the City's objective and desire to provide a parking alternative that links to other modes of transportation at a key entry point of the City (and is mindful of the City's FTA funding source requirements, if applicable) while, at the same time, assuring reasonably sufficient and orderly parking for the Retail Space occupants, and the Parties shall reasonably consider implementing any alternatives suggested by each other to effect this intent.

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(iii) During Non-Retail Hours, public, transit and valet parking shall be promoted pursuant to a reasonably and mutually agreed upon joint marketing effort of City and Developer, the cost of

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO ISSUE TWO (2) CERTIFICATIONS OF CONSISTENCY WITH THE CITY'S CONSOLIDATED PLAN TO CARRFOUR SUPPORTIVE HOUSING, TO RENEW THE AWARDED FUNDS PROVIDED DIRECTLY BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TO PROVIDE SUPPORTIVE HOUSING IN THE FORM OF TWENTY-FOUR (24) UNITS OF TRANSITIONAL AND FORTY-EIGHT (48) UNITS OF PERMANENT HOUSING FOR FORMERLY HOMELESS INDIVIDUALS AT 8540 HARDING AVENUE, MIAMI BEACH, FLORIDA.

WHEREAS, on July 1, 1998, the Mayor and City Commission approved the City's Consolidated Plan for the Fiscal Years 1998-2002; and

WHEREAS, on May 8, 2002, the Mayor and City Commission authorized and approved the City Manager to issue a Certification of Consistency with City's Consolidated Plan for Fiscal Years 1998-2002; and

WHEREAS, on July 30, 2003, the Mayor and City Commission approved the City's Consolidated Plan for Fiscal Years 2003-2007; and

WHEREAS, Carrfour Supportive Housing (Carrfour) proposes to provide supportive housing in the form of twenty-four (24) units of transitional and forty-eight (48) permanent housing at 8540 Harding Avenue, Miami Beach, (the Project) with no direct client services performed on site; and

WHEREAS, the Project as described is located in the RM-1 Zoning District, which allows permanent occupancy housing such as apartments or condominiums, as a main permitted use; and

WHEREAS, if at any time Carrfour wishes to provide on-site support services, Carrfour must first obtain a conditional use permit as an institutional use as required by Section 142-153 of the Miami Beach City Code; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) requires that as part of a renewal of award under the Supportive Housing Program (SHP) that Carrfour obtain and submit a Certification of Consistency with the Consolidated Plan from the entitlement jurisdiction where the proposed activity is located; and

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WHEREAS, Carrfour has requested that the City issue the required two Certifications of Consistency with the Consolidated Plan; one for the transitional housing component and one for the permanent housing component of the aforementioned Project; and

WHEREAS, in accordance with the City's adopted Consolidated Plan, each request for a Certification of Consistency with the Consolidated Plan requires City Commission review and approval; and

WHEREAS, the Administration has reviewed the proposed Project for consistency and has found it to be in accordance with the City's adopted Consolidated Plan for Fiscal Years 2003-2007; and

WHEREAS, the Certificates of Consistency, once issued, will be submitted by Carrfour to HUD as part of a funding application for renewal of award of funds for the proposed Project.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the City Manager to issue two (2) Certifications of Consistency with the City's Consolidated Plan for Fiscal Years 2003-2007, to Carrfour to provide supportive housing in the form of twenty-four (24) units of transitional and forty-eight (48) permanent housing at 8540 Harding Avenue, Miami Beach, with no direct client services performed on site.

PASSED AND ADOPTED this _____ day of _____, 2005.

ATTEST:

CITY CLERK

MAYOR

T:\AGENDA\2005\May1805\Consent\Carrfour 2005_Resolution.doc

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

5-16-05

Date



CITY OF MIAMI BEACH
Office of the City Manager
Interoffice Memorandum

To: Mayor David Dermer
and City Commissioners

Date: May 16, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge", written over the printed name.

Subject: **RULES & REGULATIONS FOR THE BEACHWALK**

The City of Miami Beach is developing a series of bicycle/pedestrian/greenway projects to be known as the Atlantic Greenway Network (AGN). The Atlantic Greenway Network is made up of two main trail systems; the Beach Corridors, which extend in a general northbound/southbound direction, running between the erosion control line and the dune system; and the Neighborhood Trails, which extend in a general east-west as well as north-south directions through the south, middle, and north beach neighborhoods. Individual projects will be constructed to create a continuous trail network allowing for alternative transportation and community enhancement.

The objective of the AGN is to support multimodal and alternative transportation, link bicycle and pedestrian destinations, increase pedestrian and bicycle safety, and improve trail network connectivity. The Beachwalk, running from 21st street to 14th street along the west side of the dune system, is the first section of the AGN to be completed. The pavers were specifically flipped in order to provide a smoother ride for bicyclists, rollerbladers, and skateboarders to use the path, along with pedestrians. In addition, the path is at minimum 15 feet wide, in order to provide adequate space for both pedestrians and bicyclists.

The City Attorney's office is currently drafting a new ordinance to reflect the rules and regulations for the Beachwalk. This ordinance will differ from the Boardwalk rules and regulations since non-motorized conveyances are allowed on the Beachwalk.

There has been a question of whether or not dogs are allowed on the newly constructed Beachwalk. All parks and beaches in Miami Dade County are regulated by Miami-Dade ordinances and City of Miami Beach ordinances. The current ordinances are cited below:

- Miami-Dade County ordinance, Chapter 5; Sec. 5-4 – *It is deemed in the best interests of the health, safety and welfare of the citizenry and visitors of Miami-Dade County, Florida, that all necessary precautions be implemented to prevent cutaneous larva migrans (a frequently severe skin disorder caused by the infective larvae of a dog or cat hookworm which is transmitted by the contact of the human skin with soil contaminated by dog or cat feces), and visceral larva migrans (a disease caused by the ingestion of larvae dog roundworms which commonly occurs when young children swallow dirt). **No responsible party owning or having charge, care, custody or control of any dog shall cause, permit or allow the dog into or upon any public park or beach in the county; provided, however, this provision shall not apply to parkways, wayside parks, or other park areas in which dogs are specifically authorized.***
- City of Miami Beach ordinance, Chapter 10; sec. 10-10 – ***It shall be prohibited for any person to take any animal into, or to keep any animal in or upon, any public park or public beach in the city, except for areas reasonably designated by the City Manager. Animals under the custody and control of a law enforcement officer and dogs accompanying a disabled person are excluded from this section.***

Agenda Item 89F

Date 5-18-05

Besides the fact that the two ordinances above clearly prohibit dogs on any public parks or beaches in Miami-Dade County, it is important to note that to allow dogs on the Beachwalk could pose a significant health hazard to residents and tourists who may be barefoot as they cross the Beachwalk to get to the beach or use it as a recreational corridor. The Beachwalk is a very different environment from a City sidewalk. City sidewalks are typically used by resident and tourists who are wearing shoes, this may not always be the case with people enjoying the new recreational corridor. Even if the animal waste or urine is cleaned, there is no guarantee that there will not be residual bacteria or micro-organisms left on the Beachwalk that may cause disease, infections or rashes.

Another important point is that the Health Department could, at any point, close or issue health advisories for any section of the beach if in their inspections they determine that there is bacteria concentration that can cause health risks to people using the Beachwalk.

The Administration believes that the Beachwalk is a great promoter of tourism and maintaining a clean and safe Beachwalk would encourage visitors to come to the beach and to utilize the Beachwalk to walk, run, in-line skate, exercise and bike. It would not be a good experience for a resident or a visitor to step in animal waste as they use our new Beachwalk.


JMG\RCM\FHB\jzr

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING FLORIDA GOVERNOR JEB BUSH TO SUPPORT THE FULL FUNDING RECOMMENDATION OF THE FLORIDA LEGISLATURE RELATED TO THE CULTURAL FACILITIES PROGRAM WHICH INCLUDES THE CITY OF MIAMI BEACH'S APPLICATION FOR THE BYRON CARLYLE THEATER DURING HIS REVIEW AND APPROVAL OF THE 2006 BUDGET.

WHEREAS, the Florida House of Representatives and the Florida Senate have approved the budget for the State of Florida for Fiscal Year 2005/06 which includes funding for arts, culture, and historical resources; and

WHEREAS, the Florida Division of Cultural Affairs administers the Cultural Facilities Grant Program, which provides funding to local governments for the restoration and construction of cultural facilities; and

WHEREAS, studies, statistics, residents and visitors of the state all confirm that Florida's arts and cultural resources help promote tourism, strengthen student achievement, build and connect communities, employ over 22,000 full and part-time positions, and contribute over \$1.4 billion to the state's economy each year; and

WHEREAS, the state's annual investment in arts and cultural development reaps substantial rewards and helps to successfully leverage state dollars at the local level in that, for every state dollar invested, \$44 dollars are expended; and

WHEREAS, art and culture enhance Florida as a popular destination site; and

WHEREAS, the City submitted an application to the Cultural Facilities Grant Program in the amount of \$500,000 for the Byron Carlyle; and

WHEREAS, the Byron Carlyle is the City's newest cultural facility and is an integral component of the City's efforts to revitalize the North Beach area; and

WHEREAS, the budget approved by the Florida Legislature provides for funding of the Cultural Facilities Grant Program, including full funding of the City's application for \$500,000 for the Byron Carlyle; and

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WHEREAS, the budget has been transmitted from the Legislature to the Governor for review and approval.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission urge Florida Governor Jeb Bush to support the Florida Legislature's recommendation related to the Cultural Facilities Grant Program which includes the City of Miami Beach's application for the Byron Carlyle Theater during his review and approval of the 2006 Budget.

PASSED and **ADOPTED** this ____ day of May, 2005.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM
& LANGUAGE & FOR EXECUTION



City Attorney

5-16-05
Date